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John E. Dougherty
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Complainant & Intervenor

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP-Chairman
GARY PIERCE
BOB BURNS
SUSAN BITTER SMITH
BRENDA BURNS

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
INSTALL A WATER LINE FROM THE WELL ON
TIEMAN TO WELL NO. 1 ON TOWERS

W-04254A-12-0204

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
PURCHASE THE WELL NO. 4 SITE AND THE
COMPANY VEHICLE.

W-04254A-12-0205

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING FOR AN
8,000-GALLON HYDRO-PNEUMATIC TANK

W-04254A-12-0206

IN THE MATTER OF THE RATE
APPLICATION OF MONTEZUMA RIMROCK
WATER COMPANY, LLC.

W-04254A-12-0207

JOHN E. DOUGHERTY,
COMPLAINANT,
V.
MONTEZUMA RIMROCK WATER
COMPANY, LLC,
RESPONDENT.

W-04254A-11-0323

Arizona Corporation Commission

DOCKETED

APR 15 2013

DOCKETED BY

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DOCKET CONTROL

1
2 IN THE MATTER OF THE APPLICATION OF
3 MONTEZUMA RIMROCK WATER
4 COMPANY, LLC FOR APPROVAL OF A
5 RATE INCREASE.

W-04254A-08-0361

6
7 IN THE MATTER OF THE APPLICATION OF
8 MONTEZUMA RIMROCK WATER
9 COMPANY, LLC FOR APPROVAL OF A
10 FINANCING APPLICATION.

W-04254A-08-0362

11 **MOTION FOR PARTIAL**
12 **SUMMARY JUDGMENT**
13 **ALLEGATION XVII**
14 **AMENDED FORMAL**
15 **COMPLAINT**

16 Pursuant to Rule 56, Ariz. R. Civ. P., Intervenor/Complainant hereby moves this Court
17 for Summary Judgment on Allegation XVII (A, B & C) of the Amended Formal
18 Complaint.

19
20 Allegation XVII, in part, states:

21
22 A. Montezuma knowingly and willingly violated the January 4, 2012, March 12, 2012
23 and April 9, 2012 Procedural Orders in Docket W-4254A-08-361, W-4254A-08-362
24 by failing to docket a March 22, 2012 Capital Lease agreement between Montezuma
25 and Nile River Leasing, LLC for an Arsenic Treatment Building. Instead, the
26 Company docketed a fraudulent March 16, 2012 lease agreement between Mrs.
27 Patricia Olsen, personally, and Nile River Leasing for the building. This action was
28 undertaken to circumvent Commission approval of Capital Leases in violation of
29 ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

30
31 B. Montezuma knowingly and willfully violated the January 4, 2012, March 12, 2012
32 and April 9, 2012 Procedural Orders in Docket W-4254A-08-361, W-4254A-08-362
33 by failing to docket a Capital Lease agreement with Financial Pacific Leasing, LLC
34 for an Arsenic Treatment Facility signed on or about April 3, 2012. Instead, the
35 Company docketed a fraudulent March 16, 2012 lease agreement between Mrs.
36 Patricia Olsen, personally, and Nile River for the Arsenic treatment equipment. This
37 action was taken to circumvent Commission approval of Capital Leases in violation
38 of ARS S40-301, ARS S40-302, ARS S40-424 and ARS S40-425.

39
40 C. Ms. Patricia Olsen knowingly and willfully docketed a fraudulent lease agreement
41 between Montezuma and Financial Pacific Leasing for an Arsenic Treatment Facility
42 dated on or about May 2, 2012 in an October 25, 2012 filing docketed in W-04254A-
43 12-0204 et seq. when, in fact, the Company had entered into an effective lease
44 agreement with Financial Pacific Leasing on or about April 3, 2012. This action was
45 taken to circumvent Commission approval of Capital leases in violation of ARS S40-

1 301, ARS S40-302, ARS S40-424 and ARS S40-425.

2
3 As set forth below, there is no genuine issue as to any material fact and
4 Intervenor/Complainant is entitled to judgment as a matter of law.

5
6 Although Intervenor/Complainant is currently seeking Summary Judgment as to only
7 Allegation XVII (A, B, C), the requested relief could be dispositive as to Formal
8 Complaint in its entirety.

9
10 **DISCUSSION**

11
12 The legal and factual bases for granting the instant motion are straightforward.

13
14 On January 4, 2012, March 12, 2012 and April 9, 2012, the Commission issued
15 Procedural Orders requiring the Company to disclose any and all lease agreements to
16 acquire an Arsenic Treatment Facility and an Arsenic Treatment Building to house the
17 equipment. (SOF, Par. 1, 2 & 3). 1

18
19 To avoid disclosure of Capital leases that would have required review and approval by
20 Commission staff, Montezuma executed a fraudulent scheme in Docket W-04254A-08-
21 0361, 0362 whereby the Company and its Counsel stated that Ms. Patricia Olsen had
22 personally entered into two separate lease agreements for the facility and the building.

23
24 In docketed briefs and statements before the Commission, Montezuma's Counsel claimed
25 that since Ms. Olsen had entered into the lease agreements personally, there was no
26 requirement for Commission review and approval of the leases. (SOF Par. 5) On April
27 13, 2012, Counsel docketed two lease agreements dated March 16, 2012 purportedly
28 between Ms. Olsen and Nile River Leasing, LLC. (SOF Par. 4)

29
30 The Company, however, deceived the Commission, Intervenor/Complainant and the
31 Public because it knew that the two purported lease agreements between Ms. Olsen and
32 Nile River Leasing were not the true and effective agreements. (SOF, Par. 7)

33
34 On or about March 22, 2012, Montezuma, rather than Ms. Olsen personally, signed the
35 two effective capital lease agreements for the facility and the building.

36
37 On or about March 22, 2012, the Company signed a Capital lease agreement with Nile
38 River Leasing for the building. (SOF, Par. 6, 8 & 9)

39
40 On or about March 22, 2012, the Company signed a Capital lease agreement with
41 Financial Pacific for the facility. (SOF, Par. 6, 8 & 10)

42
43
44
45 1. Pursuant to Rule 56(c)2, Ariz. R. Civ. P., a separate Statement of Facts setting forth the specific facts relied upon in
46 support of the instant motion is being filed contemporaneously herewith.

1 Despite representation by Counsel, Montezuma has never disclosed the true and effective
2 Capital leases with Nile River and Financial Pacific.

3
4 It wasn't until on or about October 25, 2012, that the Company disclosed in Docket W-
5 04254A-12-0204 et Seq., that it was Montezuma, rather than Ms. Olsen, that had signed
6 the capital lease for the arsenic building with Nile River Leasing. (SOF, Par. 11)

7
8 In the same October 2012 filing, Montezuma docketed a purported Capital Lease
9 agreement between the Company and Financial Pacific for the Arsenic Facility dated
10 May 2, 2012 that included only four of the five pages. (SOF, Par. 12)

11
12 The May 2, 2012 date of the lease is significant because it was after the April 30, 2012
13 Procedural Conference where the status of the lease agreements for the arsenic facility
14 and arsenic building were discussed and the March 22, 2012 Capital leases with Nile
15 River and Financial Pacific were not revealed.

16
17 On March 1, 2013, Intervenor/Complainant docketed a sworn, March 1, 2013 affidavit
18 from Mr. John Torbenson, the principle of Nile River Leasing, stating that Nile River did
19 not enter into the two March 16, 2012 lease agreements with Ms. Olsen. (SOF, Par. 13)

20
21 On March 21, 2013, Intervenor/Complainant docketed a sworn affidavit dated March 8,
22 2013 from Ms. Robin Richards, Nile River administrative assistant, stating that she is not
23 authorized to sign the two March 16 lease agreements between Nile River and Ms. Olsen
24 and that the signature that appears on the lease agreements to be that of "Robin Richards"
25 is not her signature. (SOF, Par. 14)

26
27 On March 21, 2013, Intervenor/Complainant docketed a March 7, 2013 letter from the
28 legal department of Financial Pacific Leasing stating that Financial Pacific did not enter
29 into a lease agreement with Montezuma Rimrock dated May 2, 2012. (SOF, Par. 15)

30 31 **Montezuma Rimrock's Response to Allegation XVII**

32
33 As to Allegation XVII (A) Montezuma Rimrock admits in its response to the Formal
34 Amended Complaint docketed on March 18, 2013, that the Company "should have
35 advised the Commission and ALJ of the new lease agreement" for the Arsenic building.
36 (Page 10, Line 10-11)

37
38 As to Allegation XVII (B) Montezuma Rimrock admits in its response to the Formal
39 Amended Complaint docketed on March 18, 2013, "the lease agreement with Financial
40 Pacific is a capital lease and the Company should have sought approval of that lease from
41 the Commission." (Page 11, Line 11-13)

42
43 As to Allegation XVII (C) Montezuma Rimrock denies in its response to the Formal
44 Complaint docketed on March 18, 2013, that it docketed a fraudulent lease agreement
45 with Financial Pacific by docketing the May 2, 2012 lease agreement. Counsel states that

1 the Company and Financial Pacific signed two lease agreements dated April 3, 2012 and
2 May 2, 2012, but ultimately decided to use the May lease. (Page 12, Lines 11-13)

3
4 Montezuma's denial is not tenable and offered without proof. Financial Pacific directly
5 controverts the Company's claim that there were two leases. The Financial Pacific legal
6 department letter states that the May 2, 2012 lease agreement docketed by the Company
7 is an "unauthorized modified version of the original."

8 9 **APPLICABLE LAW**

10 11 **1. ARS S40-301 and ARS S40-302**

12
13 The March 22, 2012 Capital leases between the Company and Nile River and Financial
14 Pacific are subject to ARS S40-301 and ARS S40-302.

15
16 ARS S40-301(A) states "The power of public service corporations to issue stocks and
17 stock certificates, bonds, notes and other evidences of indebtedness...is a special
18 privilege, the right of supervision, restriction and control of which is vested in the state,
19 and such power shall be exercised as provided by law and under rules, regulations and
20 orders of the commission."

21
22 ARS S40-301 (B) states "A public service corporation may issue...other evidence of
23 indebtedness...when authorized by an order of the Commission."

24
25 Montezuma signed the March 22, 2012 Capital lease agreements with Nile River and
26 Financial Pacific without an order of the Commission authorizing the Company to do so.

27
28 ARS S40-302 (A) states "Before a public service corporation issues...other evidences of
29 indebtedness, it shall first secure from the commission an order authorizing such issue..."

30
31 Montezuma signed the March 22, 2012 Capital lease agreements with Nile River and
32 Financial Pacific without securing from the Commission an order authorizing it to do so.

33 34 **2. ARS S40-424**

35
36 Montezuma and Ms. Olsen repeatedly violated ARS S40-424 in executing their scheme
37 of docketing fraudulent lease agreements to avoid Commission authorization of Capital
38 leases under ARS S40-301 and ARS S40-302.

39
40 ARS S40-424 (A) states "If any corporation or person fails to observe or comply with
41 any order, rule, or requirement of the commission or any commissioner, the corporation
42 or person shall be in contempt of the commission..."

43
44 Montezuma and Ms. Olsen, who is the sole member of Montezuma Water Company
45 LLC, both violated the January 4, 2012, March 12, 2012 and April 9, 2012 Procedural
46 Orders in Docket W-4254A-08-361, W-4254A-08-362 by failing to disclose the

1 Company had entered into Capital Lease agreements with Nile River and Financial
2 Pacific on or about March 22, 2012.

3
4 Montezuma and Ms. Olsen violated S40-424 by entering into Capital Lease
5 agreements on or about March 22, 2012 with Nile River and Financial Pacific without
6 first obtaining Commission authorization as required by S40-301 and S40-302.

7
8 Montezuma and Ms. Olsen violated S40-424 by docketing two unauthorized and
9 fraudulent lease agreements dated March 16, 2012 purportedly between Ms. Olsen
10 and Nile River Leasing for an arsenic building and a arsenic facility.

11
12 Montezuma and Ms. Olsen violated S40-424 by docketing an unauthorized and
13 fraudulent capital lease agreement dated May 2, 2012 between the Company and
14 Financial Pacific Leasing.

15 16 **3. ARS S40-425 (A)**

17
18 ARS S40-425 (A) states “Any public service corporation which violates or fails to
19 comply with any provision of the constitution...the penalty for which is not otherwise
20 provided, is subject to a penalty of not less than one hundred nor more than five thousand
21 dollars for each offense.”

22
23 Montezuma and Ms. Olsen violated ARS S40-425(A) by engaging in fraudulent acts
24 by docketing two March 16, 2012 lease agreements between herself and Nile River
25 that were not authorized or signed by Nile River Leasing.

26
27 Montezuma and Ms. Olsen violated ARS S40-425(A) by docketing a fraudulent
28 capital lease agreement dated May 2, 2012 with Financial Pacific on or about October
29 25, 2012.

30 31 **CONCLUSION**

32
33 There is no genuine issue as to any material fact and Intervenor/Complainant is entitled to
34 Judgment as a matter of law.

35
36 The Company admits it should have disclosed the capital lease agreements the Company
37 signed with Nile River (Allegation XVII (A)) and Financial Pacific (Allegation XVII (B))
38 to the Commission but failed to do so.

39
40 The Company’s failure to disclose the two leases, both of which are Capital leases, is a
41 direct violation of three Procedural Orders in Docket W-04254A-08-0361, 0362.

42
43 The failure to disclose the March 22, 2012 capital leases and the docketing of the
44 fraudulent March 16, 2012 leases was undertaken to circumvent Commission
45 approval of Capital Leases all in violation of ARS S40-301, ARS S40-302, ARS S40-

1 424 and ARS S40-425.

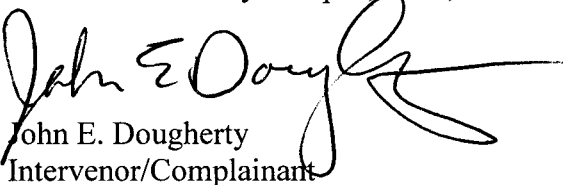
2
3 The Company's denial of Allegation XVII (c) is not tenable.

4
5 Financial Pacific's legal department directly contradicts the Company's explanation that
6 Financial Pacific and the Company entered into two lease agreements and that the May 2,
7 2012 lease was ultimately used. Financial Pacific's legal department states the May 2,
8 2012 lease "appears to be an unauthorized modified version of the original."
9

10 The Company's filing of the fraudulent May 2, 2012 Financial Pacific lease was an
11 attempt circumvent Commission approval of Capital leases in violation of ARS S40-
12 301, ARS S40-302, ARS S40-424 and ARS S40-425.
13

14 Intervenor/Complainant respectfully requests the instant Motion for Partial Summary
15 Judgment be granted; that the Company and Ms. Olsen be found in Contempt of the
16 Commission in violation of ARS S40-424; that the Company and Ms. Olsen be found in
17 violation of ARS S40-425 for docketing three fraudulent leases; that the Company and
18 Ms. Olsen be found in violation of ARS S40-301, ARS S40-302 for entering into Capital
19 leases without Commission authorization; that the Commission make a criminal referral
20 under ARS S40-421 (A, B) to the Attorney General or County Attorney for the fraud
21 violations described herewith; that the Company's Certificate of Convenience and
22 Necessity be revoked; and that the Commission grant to Intervenor/Complainant such
23 other and further relief as this Court deem just, equitable or proper.
24

25 Dated this 15th Day of April, 2013,

26
27 
28
29 John E. Dougherty
30 Intervenor/Complainant
31

32 Copies of the foregoing Mailed/Hand Delivered
33 This 15th Day of April, 2013 to:
34

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